



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



313852

REPLY TO THE ATTENTION OF:

FEB 23 2006

C-14J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Honorable Richard Hyde
Mayor, City of Waukegan
100 N. Martin Luther King Jr. Ave.
Waukegan, IL 60085

RE: Notice of Federal Lien on former OMC North Plant and Containment Cells

Dear Mayor Hyde:

This letter informs you that the United States Environmental Protection Agency ("EPA") intends to perfect a lien upon the above referenced property located at 90-100 Sea Horse Drive, Waukegan, IL 60085, and the three PCB impoundment cells constructed by OMC near the plant ("the Property"). The exact legal description of the Property subject to the lien is contained in the enclosure to this letter. The Property will soon be added as an operable unit of the OMC Superfund Site. The lien which EPA intends to perfect against the Property arises under Section 107(r) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), commonly known as Superfund, 42 U.S.C. § 9607(r).

Under CERCLA Sections 107(a) and 101(9), 42 U.S.C. §§ 9607(a) and 9701(9), liable persons include persons who own any facility, including a site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located. Responsible parties are liable to pay costs and damages of the government, including the costs incurred by the United States in responding to a release or threat of release at the Property. EPA has determined that a release or threat of release of hazardous substances pursuant to CERCLA Section 101(22) has occurred at or from the Property. The Property is soon to part of the OMC Superfund Site, at which PCBs and other hazardous substances came to be located, and is subject to or affected by a removal or remedial action. The City of Waukegan recently finalized its purchase of the Site, and a prospective purchaser agreement ("Agreement") signed by the United States and the City resolved the City's potential liability for Existing Contamination at the property prior to the City taking title thereto, based on certain conditions and obligations set forth in the Agreement. One of the conditions set forth in the Agreement is that it is without prejudice to the EPA claims based on Section 107(r) of CERCLA, which is the CERCLA windfall lien provision.

The lien arising in favor of the United States on the Property continues until the liability for the costs is satisfied or until the liability for the costs becomes unenforceable through operation of the statute of limitations in CERCLA Section 113. Costs and damages include the costs incurred by the United States in responding to a release or threat of release at the Property. A lien under CERCLA Section 107(r) may be satisfied by paying the lesser of EPA's unrecovered response costs or the increase in fair market value attributable to EPA's cleanup.

EPA has assembled a Lien Filing Record consisting of documents relating to its decision to perfect the lien. This record is kept at the following address, and may be reviewed and copied at reasonable times by arrangement with:

Thomas J. Martin
Associate Regional Counsel
Office of Regional Counsel (C-14J)
77 W. Jackson Blvd., Chicago, IL 60604

EPA has reviewed the information in the Lien Filing Record and believes that the Agency has a reasonable basis to believe that the statutory elements for perfecting a lien are satisfied. After 14 calendar days from the date of this letter, EPA intends to transmit a notice of lien to the Lake County Recorder of Deeds, as designated by State law, where the real property is located. The effect of this filing is to perfect the lien upon your property.

You may notify EPA within 14 calendar days from the date of mailing of this letter in writing if you believe EPA's information or determination is in error. You may also request to appear before a neutral EPA official to present any information that you have indicating that EPA does not have a reasonable basis to perfect a lien. You should describe in your letter or written request your reasons for believing that EPA does not have a reasonable basis to perfect its lien, because EPA may, as described below, agree with your reasons and reconsider its intention to perfect a lien without further review or a meeting. Any written submissions or requests for a meeting should reference the OMC Superfund Site, be addressed to the above referenced Regional Attorney, and may include documents or information which support your contentions.

If EPA receives a written submission or a request for a meeting from you within 14 calendar days from the date of mailing of this letter, Agency staff will review your submission or request for a meeting. If, after review and consultation, EPA agrees that the Agency does not have a reasonable basis upon which to perfect a lien, EPA will not perfect its lien, and will so notify you. If EPA disagrees, the written submission or request will be referred to a neutral EPA official selected for the purpose of reviewing the submission or for conducting the meeting, along with the Lien Filing Record.

If you have requested an opportunity to appear, a meeting will be scheduled. You may choose to attend this meeting via teleconference. The Agency will be represented by its enforcement staff, including a representative from the Office of Regional Counsel. You may be represented by counsel at this meeting.

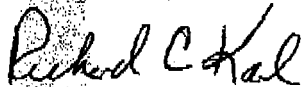
The meeting will be an informal hearing in which you may provide EPA with information as to why the Agency's assumptions require reconsideration. The meeting will not be conducted using rules of evidence or formal administrative or judicial procedures. The sole issue at the meeting would be whether EPA has a reasonable basis to perfect a lien based upon CERCLA Section 107(r).

After reviewing your written submissions, or conducting a meeting, if one is requested, the neutral EPA official will issue a recommended decision based on the Lien Filing Record. The recommended decision will state whether EPA has a reasonable basis to perfect the lien and will be forwarded to the Agency official delegated to execute liens for action. You will be notified of the Agency's action (whether perfection or the decision not to perfect) and furnished a copy of the recommended decision.

Neither you nor EPA waives or is prohibited from asserting any claims or defenses in any subsequent legal or administrative proceeding by the submission of information, a request for and participation at a meeting, or recommended decision by the neutral EPA official that EPA has a reasonable basis to perfect a lien.

If you have any questions pertaining to this letter, please contact Thomas J. Martin at 312-886-4273.

Sincerely,



Richard C. Karl, Director
Superfund Division

Enclosure (legal description of former OMC North Plant property and containment cells)

cc: Jeffery D. Jeep, Esq.
The Jeff Diver Group, LLC
1749 South Naperville Road
Suite 102
Wheaton, IL 60187

Alan Tenenbaum
Frank Biros
U.S. Department of Justice

Beth Wallace
Illinois Attorney Generals Office

bcc: Martin (C-14J)
Adler (SR-6J)
Blough (DW-8J)